

Nos. 21957, 22404

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

BEVERLY HILLS FEDERAL SAVINGS & LOAN AS-
SOCIATION,

Appellant,

vs.

EUGENE WILBR, JR., MARGUERITE R. WILBR, RICH-
ARDS MATTHEWS, JR., ROBERT G. RUII and
EUGENE C. JONES,

Appellees.

BEVERLY HILLS FEDERAL SAVINGS & LOAN AS-
SOCIATION,

Appellant,

vs.

TITLE INSURANCE & TRUST COMPANY,

Appellee.

BRIEF OF RESPONDENT TITLE INSURANCE & TRUST COMPANY.

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FILED

MAY 14 1958

U.S. DIST. COURT

TOPICAL INDEX

	Page
Statutes Involved	1
Statement of the Case	3
Summary of Argument	5
Argument	6

I.

The District Court Does Not Have Jurisdiction Over Appellant's Claim Against Title Insurance & Trust Company Under 12 U.S.C.A. 1464- (d)(1)	6
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II.

The District Court Does Not Have Jurisdiction or Ancillary Jurisdiction Over Appellant's Claim Against Title Insurance & Trust Company as a Cross Claim	7
Conclusion	8

TABLE OF AUTHORITIES CITED

Case	Page
Hurn v. Oursler, 289 U.S. 238, 53 St. Ct. 586, 77 L. Ed. 1148	7

Rules

Federal Rules of Civil Procedure, Rule 13(g)	3, 5
--	------

Statutes

United States Code Annotated, Title 12, Sec. 1437- (b)	2, 5
United States Code Annotated, Title 12, Sec. 1464- (d)(1)	2, 3, 5, 6
United States Code Annotated, Title 28, Sec. 1345	2, 5, 7

Nos. 21957, 22404

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

BEVERLY HILLS FEDERAL SAVINGS & LOAN ASSOCIATION,

Appellant,

vs.

EUGENE WEBB, JR., MARGUERITE R. WEBB, RICHARDS MATTHEWS, JR., ROBERT G. RUF and
EUGENE C. JONES,

Appellees.

BEVERLY HILLS FEDERAL SAVINGS & LOAN ASSOCIATION,

Appellant,

vs.

TITLE INSURANCE & TRUST COMPANY,

Appellee.

BRIEF OF RESPONDENT TITLE INSURANCE & TRUST COMPANY.

Statutes Involved.

Appellant claims that the United States District Court has jurisdiction of the subject matter of the claims in question based on one or more of the following federal statutes:

1. Jurisdiction of Actions Involving Controversies With Respect to Notices of Violation of Law Given by the Federal Home Loan Bank Board.

12 U.S.C.A. 1464(d)(1):

“ . . . Upon the giving of notice of alleged violation of law or regulation as herein provided, either the Board or the association affected may, within thirty days after the service of said notice, apply to the United States district court for the district where the association is located for a declaratory judgment and an injunction or other relief with respect to such controversy, and said court shall have jurisdiction to adjudicate the same as in other cases and to enforce its orders. . . .”

2. Jurisdiction of Actions Commenced by the Federal Home Loan Bank Board and of Cross Claims in Such Actions.

28 U.S.C.A. 1345:

“Except as otherwise provided by Act of Congress, the district courts shall have original jurisdiction of all civil actions, suits or proceedings commenced by the United States, or by any agency or officer thereof expressly authorized to sue by Act of Congress.”

12 U.S.C.A. 1437(b):

“The Home Loan Bank Board which was, pursuant to Reorganization Plan Numbered 3 of 1947, established and made a constituent agency of the Housing and Home Finance Agency shall, from August 11, 1955, cease to be such constituent agency and shall be an independent agency (including the Federal Savings and Loan Insurance Corporation) in the executive branch of the Government: . . . The name of the Home Loan Bank Board is changed to ‘Federal Home Loan Bank Board’.”

12 U.S.C.A. 1464(d)(1):

“ . . . The Board shall have power to sue and be sued, complain and defend in any court of competent jurisdiction in the United States or its territories or possessions or the Commonwealth of Puerto Rico. . . .”

Rule 13(g), Federal Rules of Civil Procedure:

“A pleading may state as a cross claim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein or relating to any property that is the subject matter of the original action. Such cross claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.”

Statement of the Case.

Title Insurance & Trust Company, Appellee herein, first became a party to this action through service of a Second Amended and Supplemental Complaint on May 14, 1965. The action was previously filed by Beverly Hills Federal Savings & Loan Association against all other parties in March of 1962. The suit involved claims and cross-claims against and by the Federal Home Loan Bank Board, and had involved lengthy discovery proceedings prior to the service of said Second Amended and Supplemental Complaint on Title Insurance & Trust Company.

The Second Amended and Supplemental Complaint herein alleges in Paragraph 9 thereof that Title Insurance & Trust Company was one of three trustees of

an irrevocable trust created by defendants Eugene Webb, Jr. and Marguerite R. Webb for the benefit of their children. Said trust held as one of its assets all of the outstanding stock of the Southland Company. Paragraph 19 of said Second Amended and Supplemental Complaint alleges that in 1961 while Title Insurance & Trust Company was one of the co-trustees of said trust the stock in the Southland Company was sold to Lytton Financial Corporation by the remaining co-trustees although Title Insurance & Trust Company did not execute any of the documents pertaining to the transfer of said stock, nor was its consent to the transaction sought. Said paragraph further alleges that under the terms of the trust agreement the consent and approval of defendants Eugene Webb, Jr. and Marguerite R. Webb was sufficient to transfer the stock of the Southland Company to Lytton Financial Corporation without the assent of Title Insurance & Trust Company. Said paragraph 19 further alleged that it was not asserted by plaintiff that defendant Title Insurance & Trust Company acted in violation of any law, regulation or by-law but was made a defendant for the sole purpose of facilitating the enforcement of any orders that might be made by the Court with respect to the trust or the trust property.

On May 5, 1967, defendant Title Insurance & Trust Company filed its Motion to Dismiss the Second Amended and Supplemental Complaint on two grounds: lack of jurisdiction over the subject matter and failure to state any claim against said defendant upon which relief could be granted. On August 14, 1967 the District Court entered its judgment of dismissal of defendant Title Insurance & Trust Company for lack of jurisdiction of the subject matter. Defendant Title In-

insurance & Trust Company's additional ground for dismissal for failure to state any claim upon which relief could be granted, not having been reached by the Court, was denied without prejudice to renewal at a later time.

On August 31, 1967, plaintiff Beverly Hills Federal Savings & Loan Association served on defendant Title Insurance & Trust Company a notice of appeal from said order of the District Court dismissing the action as to that defendant.

Summary of Argument.

1. 12 U.S.C.A. 1464(d)(1) does not confer jurisdiction on the District Court as to Beverly Hills Federal Savings & Loan Association's action against Title Insurance & Trust Company as no notice of any violation of law, rule or regulation was at any time given by the Federal Home Loan Bank Board to Title Insurance & Trust Company.

2. The action against Title Insurance & Trust Company was commenced by Beverly Hills Federal Savings & Loan Association and not by the Federal Home Loan Bank Board. Thus, the contention of appellant that a prior cross claim of the Federal Home Loan Bank Board confers pendant jurisdiction on the District Court as to all parties to the Board's suit is not properly made as to Title Insurance & Trust Company as said Company was not a party to the prior action brought by the Federal Home Loan Bank Board. Therefore, the provisions of 28 U.S.C.A. 1345, 12 U.S.C.A. 1437(b), 12 U.S.C.A. 1464(d)(1) and Rule 13(g) Federal Rules of Civil Procedure do not confer on the District Court ancillary jurisdiction over Title Insurance & Trust Company.

ARGUMENT.

I.

The District Court Does Not Have Jurisdiction Over Appellant's Claim Against Title Insurance & Trust Company Under 12 U.S.C.A. 1464(d)(1).

12 U.S.C.A. 1464(d)(1) permits the Federal Home Loan Bank to bring a proceeding in a Federal District Court following notice of claim of alleged violation of law or regulation against the party over whom jurisdiction is sought. No notice of claim of violation of law or regulation is now or has been made against defendant Title Insurance & Trust Company by the Federal Home Loan Bank Board. No violation of law or regulation as required under 12 U.S.C.A. 1464(d)(1) is alleged or contended by Appellant to exist as to Title Insurance & Trust Company. The only statement in the Brief of Appellant as to the jurisdiction of the District Court as to Title Insurance & Trust Company is a reference to the fact that the Court granted the motion to dismiss for lack of jurisdiction of Title Insurance & Trust Company [p. 17] and that a meeting of the Board of Directors of the Southland Company and a recessed meeting of the Board of Directors of Beverly Hills Federal Savings & Loan Association were held on a certain day at Title Insurance & Trust Company in Los Angeles [p. 17].

As stated by Appellant at page 21 of its Brief the only controversy, and only claim upon which jurisdiction is based under 12 U.S.C.A. 1464(d)(1) relates to whether or not the defendants referred to in the Brief of Appellant as the "Webb" group must account to Beverly Hills Federal Savings & Loan Association for secret profit realized in their dealings with Beverly

Hills Federal Savings & Loan Association and the Southland Company. No contention is made by any party of any controversy as to Title Insurance & Trust Company. Appellant's claim against Title Insurance & Trust Company, if such can be denoted a claim, being wholly independent of any claim by appellant against the Federal Home Loan Bank Board or of the claim of the Federal Home Loan Bank Board against Appellant or the "Webb Group" of defendants this action was properly dismissed as to Title Insurance & Trust Company by the District Court for lack of jurisdiction. *Hurn v. Oursler*, 289 U.S. 238, 53 S. Ct. 586, 77 L. Ed. 1148 (1933).

II.

The District Court Does Not Have Jurisdiction or Ancillary Jurisdiction Over Appellant's Claim Against Title Insurance & Trust Company as a Cross Claim.

28 U.S.C.A. 1345 does not provide a basis of jurisdiction in the District Court for Appellant's action against Title Insurance & Trust Company. No relief has been sought by the Federal Home Loan Bank Board as to Title Insurance & Trust Company by its answer or cross claim so as to confer original jurisdiction in the District Court below. No original jurisdiction having been created by the Board's action, no ancillary jurisdiction can be said to exist so as to permit the District Court to entertain Beverly Hills Federal Savings & Loan Association's claim asserted against Title Insurance & Trust Company. Dismissal of the action of Beverly Hills Federal Savings & Loan Association as to Title Insurance & Trust Company was proper by the District Court.

Conclusion.

There being no claim of diversity jurisdiction in this action and no contention of a violation of any federal statute, rule or regulation, this action as to Title Insurance & Trust Company was properly dismissed by the District Court and such action should be affirmed on appeal.

Respectfully submitted,

PAUL, HASTINGS, JANOFSKY &
WALKER,
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ROBERT G. LANE,

*Attorneys for Appellee, Title
Insurance & Trust Co.*

Certificate.

I certify that in connection with the preparation of this brief, I have examined Rules 18, 19, and 39 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

ROBERT G. LANE

